

REQUEST FOR PUBLIC COMMENT CONCERNING REVIEW OF ADOPTED OR AMENDED REGULATIONS AS REQUIRED BY EXECUTIVE ORDER S-2-03

Executive Order S-2-03 (attached) issued on November 17, 2003, requires all executive offices to conduct a review of all regulations adopted, amended, or repealed between January 1999 and November 2003. The review is to determine compliance with the provisions of Government Code section 11346.3 and 11349.1 that require an assessment of the potential impact of the regulation on business, identification of the necessity, authority, clarity, consistency, reference and non-duplication of the regulation.

The Office of Environmental Health Hazard Assessment (OEHHA) has identified and reviewed the following regulations that were adopted, amended or repealed between January 6, 1999 and November 17, 2003:

August 27, 2002 - Proposition 65 Notice Exemptions
January 7, 2003 – Proposition 65 Regulations, Technical Clean Up
July 18, 2002, February 25, 2003, and July 1, 2003 - Proposition 65 Safe Harbor Levels
May 22, 2003 - Proposition 65 Safe Use Determinations

All of the following rulemakings relate to regulations promulgated to implement the Safe Drinking Water and Toxic Enforcement Act of 1986, known as Proposition 65. Proposition 65 is a provision of law unique to California that is not duplicated at the federal level. Each of the rulemakings were adopted under authority of Health and Safety Code section 25249.12, which provides for the adoption of implementing regulations under Proposition 65.

1. PROPOSITION 65 NOTICE EXEMPTIONS:

Regulatory Rulemaking File No. 02-0716-07 S amended Title 22 of the California Code of Regulations, section 12601(b). This package adopted an exemption, under specified circumstances, to the clear and reasonable warning regulations required under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). This amendment did not impose any new requirements on the private sector. Rather, the amendment provided an exemption from the warning requirement for specific medical or dental emergency situations. There are no out-of-pocket costs or fees to businesses to avail themselves of the exemption. As long as the conditions of the exemption are met, the exemption is self-implementing. The Office of Administrative Law (OAL) found the amendment to be in conformance with the standards set forth in Government Code section 11349.1 and approved it on August 27, 2002.

2. PROPOSITION 65 REGULATION TECHNICAL CLEAN-UP:

Regulatory Rulemaking File No. 02-1121-02 S amended Title 22, sections 12102, 12302, 12304-12504, 12601, 12701, 12705, 12709, 12711, and 12721-14000; adopts sections 12203 and 12204; and repeals sections 12103, 12104, 12201, and 12301 of the California Code of Regulations. This rulemaking clarified many areas of the existing Proposition 65 regulations by adopting changes that included: removal of outdated terminology, changes for consistency of references, consolidation and alphabetization of definitions into one section coupled with the repeal of other definition sections, relocation and renumbering of sections for regulatory continuity, and grammatical corrections. These amendments provided regulatory clarification and did not impose any new requirements on the private sector. There are no out-of-pocket costs or fees to businesses associated with the amendments adopted in this package. The Office of Administrative Law found these amendments to be in conformance with the standards set forth in Government Code Section 11349.1 and approved them on January 7, 2003.

3. PROPOSITION 65 “SAFE HARBOR” LEVELS:

No significant risk levels (NSRLs) and Maximum Allowable Dose Levels (MADLs) assist interested parties in determining whether warnings are required for exposures to listed chemicals, and whether discharges to sources of drinking water are prohibited under Proposition 65. If an exposure can be shown to be less than the specific regulatory level, the responsible party has “safe harbor” from the warning requirement and discharge prohibition. The availability of a safe harbor level provides greater certainty to responsible parties in complying with Proposition 65 and to the public in determining which exposures and discharges are of concern. These amendments provide technical guidance for the private sector. Use of these levels is voluntary and does not impose any requirements on the private sector additional to those already imposed under the statute.

Regulatory Rulemaking File No. 02-0605-03 SR adopted 19 no significant risk levels (NSRL) in section 12705 and 3 maximum allowable dose levels (MADL) in section 12805, Title 22 of the California Code of Regulations.

Regulatory Rulemaking File No. 03-0110-07 S adopted 15 NSRLs in section 12705 and 1 MADL in section 12805, Title 22 of the California Code of Regulations.

Regulatory Rulemaking File No. 03-0606-05 S adopted 4 MADLs in section 12805, Title 22 of the California Code of Regulations. OAL found these amendments to be in conformance with the standards set forth in Government Code Section 11349.1 and subsequently approved Regulatory Rulemaking File No. 02-0605-03 SR on July 18, 2002, Regulatory Rulemaking File No. 03-0110-07 S on February 25, 2003, and Regulatory Rulemaking File No. 03-0606-05 S on July 1, 2003.

4. PROPOSITION 65 SAFE USE DETERMINATIONS:

Regulatory Rulemaking File No. 03-0410-01 S amends Section 12204, Title 22 of the California Code of Regulations. The safe use determination is a provision available to businesses seeking confirmation that exposure resulting from the anticipated use of a listed chemical in their product does not pose a significant risk to users. The provision has infrequently been used since its original adoption. This package adopted changes in an effort to enhance the use of this voluntary provision. These amendments did not impose any additional requirements on the private sector. Businesses are not required to seek a safe use determination. It is a voluntary process established to assist regulated businesses in determining if exposures for which the business is responsible are subject to the warning requirement. The Office of Administrative Law found these amendments to be in conformance with the standards set forth in Government Code Section 11349.1 and approved them on May 22, 2003.

OEHHA IS REQUESTING PUBLIC COMMENT CONCERNING THESE REGULATIONS AS THEY RELATE TO THE GOVERNOR'S EXECUTIVE ORDER. COMMENTS SHOULD BE SENT TO: CAROL MONAHAN, CHIEF COUNSEL AT CMONAHAN@OEHHA.CA.GOV, OR VIA MAIL OR HAND DELIVERY TO 1001 I STREET, SACRAMENTO, CA 95814 BY NO LATER THAN **JANUARY 16, 2004**.

Executive Order

EXECUTIVE DEPARTMENT

STATE OF CALIFORNIA



EXECUTIVE ORDER S-2-03
by the
Governor of the State of California

WHEREAS, State Government should be dedicated to provide certainty for the regulated communities as well as meaningful and fair public participation in government decisions which impact the cost of doing business in California;

WHEREAS, the express language of the California Administrative Procedure Act declares that "There has been an unprecedented growth in the number of administrative regulations in recent years;"

WHEREAS, the increased costs associated with California's regulatory environment have diminished competition in the national and global marketplaces for the State's goods and services;

WHEREAS, the California Administrative Procedure Act requires that state Agencies proposing to adopt, amend, or repeal any administrative regulation must assess the potential for economic impact on California business enterprises and individuals;

WHEREAS, the California Administrative Procedure Act requires that all adopted regulations be easily understandable, the least burdensome and effective alternative, be consistent with underlying legislative authority and minimize the economic impact to the regulated communities;

WHEREAS, the California Administrative Procedure Act also provides that Agency policy enforced as if it were a regulation, but which has not been adopted, amended or repealed subject to public notice and comment, is contrary to law and public policy because it subverts open government; and

WHEREAS, with the onerous impact of over-regulation on the daily lives of Californians, it is time to reassess the system of State Government that is perceived to work against businesses and inhibit growth and economic prosperity.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. Each Agency, department, board, commission and office of the executive branch (hereinafter referred to as "Agency") shall:

1. Each Agency, department, board, commission and office of the executive branch (hereinafter referred to as "Agency" or "Agencies") shall:

a) Subject to any exceptions the Director of the Department Finance allows for emergency or other situations relating to health and safety, request, pursuant to the California Administrative Procedure Act, the immediate return of any proposed regulation, including emergency regulations, for final adoption, amendment, or repeal or other processing by the Office of Administrative Law (OAL) for further review for a period not to exceed 180 days;

b) Subject to the exceptions described in paragraph 1 a) above, cease processing, pursuant to the California Administrative Procedure Act, any proposed regulatory action, including emergency regulations, for further review for a period not to exceed 180 days;

c) Pursuant to law and the extent necessary to comply with this Executive Order, suspend or postpone the effective date of any adopted, amended or repealed regulations published in the California Regulatory Notice Register but not yet effective;

d) Reassess the regulatory impact on business of any proposed regulation for adoption, amendment or repeal described in paragraphs 1 a)-c), above, pursuant to California Government Code section 11346.3 and submit a preliminary report to the Legal Affairs Secretary within 90 days of the date of this Executive Order; and

e) Submit a report of all regulations adopted, amended or repealed by each Agency since January 6, 1999 to the Legal Affairs Secretary within 90 days of the date of this Executive Order which specifically addresses the following:

1) The impact of the adopted, amended or repealed regulations on California businesses as required by California Government Code section 11346.3;

2) The authority for the adopted, amended, or repealed regulations pursuant to California Government Code sections 11342.1 and 11342.2; and

3) Conformity of the adopted, amended, or repealed regulations with the criteria set forth in California Government Code section 11349.1, of necessity, authority, clarity, consistency, reference and non-duplication.

2. Within 30 days of the date of this Executive Order, each Agency shall assess and identify any present issuance, utilization, enforcement or attempt at enforcement of any guideline, criterion, bulletin, manual, instruction, order, or standard of general application which has not been adopted as a regulation in potential violation of California Government Code section 11340.5(a) and submit its findings to OAL pursuant to California Government Code section 11340.5(b) and the Legal Affairs Secretary;

3. Upon submitting the findings of paragraph 2, above, to OAL and the Legal Affairs Secretary, any Agency utilizing such guideline, criterion, bulletin, manual, instruction, order or standard of general application in the normal course of business until OAL makes its determination to the Governor pursuant to California Government Code section 11340.5(c) shall do so on an opinion-only basis which will not carry the force of law;

4. Within five working days of the date of this Executive Order, the Director of OAL shall submit to the Legal Affairs Secretary a list of all regulations pending 30 day review under California Government Code section 11349.3, as well as any emergency regulations filed within the last 60 days with OAL pursuant to California Government Code sections 11346.1 and 11349.6;

5. The Director of the Office of Administrative Law shall, as soon as is practicable, appoint an advisory body consisting of no more than five (5) persons knowledgeable in regulatory matters to advise the Office of the Governor on how the regulatory process can be improved in California. The term of the advisory body shall expire on or before July 30, 2004; and

expire on or before July 30, 2004; and

6. Agency Secretaries and other Cabinet level positions will be responsible for ensuring compliance with the provisions of this Executive Order. For those departments that do not have Cabinet level representation, the Department of Finance will be responsible for ensuring compliance with the provisions of this Executive Order; and

7. The regulatory relief described herein shall be accomplished through existing resources.

I FURTHER DIRECT that as soon as hereafter possible, this order shall be filed with the Office of the Secretary of State and that widespread publicity and notice be given to this order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this the seventeenth day of November 2003.

/s/ Arnold Schwarzenegger

Governor of California